

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

FOX TELEVISION STATIONS, INC.,
et al.,

Plaintiffs,

v.

FILMON X, LLC, et al.,

Defendants.

Case No. 2:12-cv-06921 (GW)(JCx)
Case No. 2:12-cv-06950 (GW)(JCx)
(consolidated)

**[PROPOSED] ORDER ON CROSS-
MOTIONS FOR PARTIAL
SUMMARY JUDGMENT AND
CERTIFICATION OF IMMEDIATE
APPEAL PURSUANT TO 28 U.S.C.
SECTION 1292(b)**

NBCUNIVERSAL MEDIA, LLC, et al.

Plaintiffs,

v.

FILMON X LLC, et al.,

Defendants.

1 Before the Court are the parties' cross-motions for partial summary judgment
2 (Dkt. Nos. 167, 183). The Court heard the motions on July 16, 2015. Having
3 considered the filings and counsel's argument, the Court hereby ADOPTS its tentative
4 opinion (Dkt. No. 204) (the "Opinion"), and GRANTS Defendants' motion in part and
5 DENIES Plaintiffs' motion in part as the Court holds that Defendants are potentially
6 entitled to a compulsory license under 17 U.S.C. Section 111(c) if they meet the
7 applicable requirements, but Defendants remain potentially liable for their non-
8 compliant secondary transmissions.

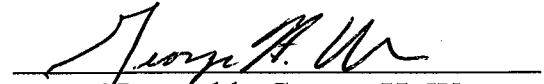
9 This Court finds that the legal issues are close and of significant commercial
10 importance. This Order and the Court's Opinion disagree with the analysis of both the
11 United States Court of Appeals for the Second Circuit in an analogous case, *WPIX,*
12 *Inc. v. ivi, Inc.*, 691 F.3d 275 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 1585 (2013), and
13 the United States Copyright Office, and will materially affect the outcome of this
14 litigation. A non-final order may be certified for interlocutory appeal where it
15 "involves a controlling question of law as to which there is a substantial ground for
16 difference of opinion" and where "an immediate appeal from the order may materially
17 advance the ultimate termination of the litigation." *Reese v. BP Exploration (Alaska)*
18 *Inc.*, 643 F.3d 681, 688 (9th Cir. 2011). An issue is "controlling" if "resolution of the
19 issue on appeal could materially affect the outcome of the litigation in the district
20 court." *In re Cement Antitrust Litig. (MDL No. 296)*, 673 F.2d 1020, 1026 (9th Cir.
21 1982). This Order and the Court's Opinion involve a controlling question of law as to
22 which there is substantial ground for difference of opinion — *i.e.*, whether the cable
23 system compulsory copyright license set forth in 17 U.S.C. Section 111(c) is available
24 to Internet-based retransmission services — and an immediate appeal from this order
25 will materially advance the ultimate termination of this litigation. *See* 28 U.S.C. §
26 1292(b); *Reese*, 643 F.3d at 688.

27 Therefore, this Court hereby CERTIFIES this Order and the Opinion that is
28 adopted hereby for immediate appeal under 28 U.S.C. Section 1292(b) and STAYS

1 further proceedings in this case pending the appeal. The preliminary injunction
2 ordered by this Court (Dkt. No. 78) shall remain in effect until further order of this
3 Court.

4 IT IS SO ORDERED.

5
6 Dated: July 24, 2015

7 
8 Honorable George H. Wu
United States District Judge